The Nature Conservancy
SAVING THE LAST GREAT PLACES ON EARTH

Worldwide Office
4245 North Fairfax Dr.
Suite 100
Arlington, Virginia 22203

tel (703) 841-5300
fax (703) 841-7400
nature.org

Ms. Catherine L. Hazlewood
Senior Policy Advisor, Global Invasive Species Initiative

Testimony
Before the Coast Guard and Maritime Transportation Subcommittee
Transportation and Infrastructure Subcommittee

United States House of Representatives

July 11, 2006 Hearing regarding Draft Legislation:
The Ballast Water Management Act of 2006

Good Morning. I am Catherine Hazlewood, Senior Policy Advisor for North America with The Nature Conservancy's Global Invasive Species Initiative. I thank the Subcommittee, not only for the opportunity to testify today, but for the Subcommittee's consistent support of strong legislation to enhance federal authority to prevent new invasions from aquatic invasive species. The Nature Conservancy has previously endorsed H.R. 1591, The National Aquatic Invasive Species Act (NAISA), legislation introduced with significant leadership and support from this Subcommittee. We additionally welcome today's opportunity to comment on the prospects for a more targeted legislative proposal to address invasive species from ships. We are appreciative of the collaborative spirit in which the staff of this Subcommittee have worked on this proposal, and look forward to providing continued assistance in the development of legislation.

A. Introduction

The Nature Conservancy is an international, nonprofit organization dedicated to the conservation of biological diversity. Our mission is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. Our on-the-ground conservation work is carried out in all 50 states and in 27 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada and more than 102 million globally.

Because we recognize that our mission cannot be achieved through ownership of private areas alone, we are additionally working to abate the top threats facing these and other protected areas, including invasive species.[1] In a survey of Conservancy land managers across the United States, invasive species were identified as a threat impeding conservation of an overwhelming 94% of our projects and preserves. Quite simply, we are losing the battle to conserve and protect land and water ecosystems without the benefit of improved federal and international policies in place to prevent and respond to invasions. For this reason, drawing upon our years of experience with invasive species management, The Nature Conservancy created the Global Invasive Species Initiative in 2001 to focus a core team of specialists within the Conservancy to work to prevent new invasions and reduce the spread of invaders at the national and international scale, as well as to build our organization's capacity to assess, prevent, rapidly detect and control invasive species that threaten biodiversity targets. We are working to accomplish these goals through implementation of diverse strategies, including:

- Advocacy to advance state, federal and international policy and law to prevent and abate the threats posed by invasive species;
- collaboration to implement best management practices in partnership with industries such as the horticulture and nursery trade;
- application of lessons learned from our own site-based monitoring, rapid response and eradication efforts to assist other land and aquatic managers in responding to invasive species threats; and
- developing improved science and data capacity to promote better decision making. For example, this last March The Nature Conservancy and The University of Notre Dame announced an innovative partnership to establish a Center for Aquatic Conservation at the University, lead by Dr. David Lodge, to test innovative methodologies to forecast and respond to invasive species in the Great Lakes region.

In the following testimony, I will characterize very generally the basic threat posed by aquatic invasive species, and outline a few recommendations to the Subcommittee for consideration in further developing your draft legislative proposal. While as currently drafted, we believe the legislative proposal will not achieve the Subcommittee's goals to reduce the risks associated with aquatic invasive species, The Nature Conservancy welcomes your continued leadership on this critical issue and offers you our fullest assistance in further developing the proposal. Additionally, we urge the Subcommittee to consider moving forward immediately to mark up and report targeted legislation to ensure interim regulation of NOBOB vessels, even in advance of pending legislation to require vessels to treat their ballast water.

[1] This testimony uses the term "invasive species" to refer to an "alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health." Alien species are, "with respect to a particular ecosystem, any species, including its seeds, eggs, spores or other biological material capable of propagating that species, that is not native to that ecosystem." *See* Executive Order 13112, "Invasive Species" (Feb. 3, 1999).

B. Aquatic Invasive Species Threat

Invasive species pose an imminent and growing threat to freshwater and marine biodiversity throughout the world.[2] After habitat destruction, invasive species are considered the greatest cause of the loss of biological diversity,[3] and according to the International Maritime Organization, invasive species are one of the four greatest threats to the health of the world's oceans. The Great Lakes Regional Collaboration's recently completed strategy identified aquatic invasive species as *the* greatest problem facing the Great Lakes.

Remarkably, invasive species have been established in *every* marine and freshwater environment for which The Nature Conservancy has data.[4] The actual number of present invasive species is presumed to be much higher. In many areas of the world, particularly where financial resources are limited, very little is known about the distribution of aquatic invasive species.[5] Within the Great Lakes, a new invasive species is established at the alarming rate of one every eight months, joining the over 160 invasive species already causing serious ecological and economic harm in the Lakes.[6]

Unlike conventional pollutants, invasive species are difficult if not impossible to eradicate and remove.[7] As a result, aquatic invasive species fundamentally alter the nation's aquatic ecosystems *permanently.* Perhaps worse, the rate of new invasions continues to increase along with the expansion of human activities which cause the species dispersal.[8] Without new federal authority to prevent new invasions and reduce the spread of existing invasions, we will continue to suffer irreparable losses through new and increased invasions.

---

[2] J.T. Carlton and K. Richardson, *Code of Practice on the Introductions and Transfers of Marine Organisms* (1994). *See also* A.N. Cohen and J.T. Carlton Biological Study: *Nonindigenous aquatic species in a United states estuary: a case study of the biological invasions of the San Francisco Bay and Delta.* (Connecticut Sea Grant NTIS Report Number PB96-166525).

[3] P.M. Vitousek, H.A. Mooney, J.Lubchenco and J.M. Melillo, *Human Domination of Earth's Ecosystems,* Science 277: 494-499.

[4] *See* TNC Marine Habitat Assessment Team data, Ecoregional Statistics, Global Science Data, Draft May 16, 2006.

[5] For example, "[l]ittle is known or documented on the status of marine invasive species in the Caribbean beyond a few instances (e.g. *Perna viridis* - green mussel)." Kairo, *et al* (2003).

[6] *See* Great Lakes Regional Collaboration Strategy (2005).

[7] "Unlike chemical or conventional pollutants, waters . . . do not have the capacity to 'assimilate' [invasive species] without changing the species abundance and diversity of the waters, which is a change to the biological integrity of the system." California Regional Water Quality Control Board, San Francisco Bay Region, "*Prevention of Exotic Species Introductions to the San Francisco Bay Estuary: A Total Maximum Daily Load Report to U.S. EPA,*" p. 7 (May 8, 2000).

[8] See, *Invasion of coastal marine communities in North America: apparent patterns, processes, and biases.* Ruiz, Fofonoff, Carlton, Wonham, and Hines, *Annual Review of Ecology and Systematics* 31: 481-531 (2000).

The introduction of invasive species through the discharge of ships' ballast water is currently the major cause of non-native aquatic species introductions to marine ecosystems throughout the world.[9] Close to 50,000 commercial cargo-carrying vessels discharge more than 21 billion gallons of ballast water containing living organisms into U.S waters every year.[10] Though research has shown the rate of invasions attributed solely to shipping has been increasing exponentially over time,[11] scientists believe that the number of invasive species currently identified in ballast water still may "grossly underrepresen[t]" the actual number of invasive species in ships' ballast.[12] Additionally, species attach themselves to ship hulls, on the rudder and propeller shafts, or may be associated with the cargo carried aboard the ship itself. [13]

An additional significant vector for invasive species are NOBOB (no-ballast-on-board) vessels. These vessels come into port loaded with cargo and thus do not need ballast water for safe operations. However, ballast tanks often contain small amounts residual water and accumulated mud that cannot be pumped out. Once cargo is offloaded, ballast water is needed to replace the cargo weight until new cargo is loaded. Such fresh ballast water provides a potential environment for larval and adult organisms trapped in the residual ballast material present in the tanks, as well as establishing conditions suitable for the hatching of resting stages in the accumulated residual sediments. Because resting stages are embryonic forms, resistant to adverse environmental conditions, these are primary candidates to survive the rigorous conditions found in ballast tanks. Thus, NOBOB ships have contributed further to the spread of invasive species, through the dissemination of those organisms found in their residual ballast and sediments.[14] Over 80% of the vessels entering the great Lakes do so as a NOBOB vessel, exempt from current regulations requiring exchange, and NOBOBs enter additional ports around the country.

---

[9]*See, e.g.*, Carlton and Geller, "Ecological Roulette: The Global Transport and Invasion of Nonindigenous Marine Organisms," *Science* (1993); *see also* Marine Board of the National Research Council, *Stemming the Tide*, National Academy Press, Washington D.C. (1996).

[10]Reauthorization of the 1990 Non-indigenous Aquatic Nuisance Prevention and Control Act: Hearings on S. 1660 Before the Subcommittee on Drinking Water, Fisheries and Wildlife, Senate Environment and Public Works Committee Regarding Non-indigenous Species and S. 1660 (Testimony of Dr. James Carlton, Director of the Maritime Studies Program of Williams College and Mystic Seaport).

[11] Ruiz, Gregory *et al*, "Invasion of Coastal Marine Communities in North America: Apparent Patterns, Processes and Biases," *Annu. Rev. Ecol. Syst.*, vol. 31, pp. 481-531, at 492-3 (2000); *see also* National Research Council, *Stemming the Tide: Controlling Introductions of Nonindigenous Species by Ships' Ballast Water*, p. 11 (1996).

[12]*See* Wonham, M.J. *et al*, "Fish and Ships: Relating Dispersal Frequency to Success in Biological Invasions," *Marine Biology*, vol. 136, pp. 1111-1121, at 1111, 1118 (2000).

[13] National Sea Grant Program, *The Role of Shipping in the Introduction of Nonindigenous Aquatic Organisms to the Coastal Waters of the United States (other than the Great Lakes) and an Analysis of Control Options*, pp. 24-32 (April 1995).

[14] *See, Assessment of NOBOB Vessels and Low-Salinity Ballast Water as Vectors for Nonindigenous Species Introductions to the Great Lakes*, Dr. David Reid (2004). The program was led jointly by the NOAA Great Lakes Environmental Research Lab and the University of Michigan's Cooperative Institute of Limnology and Ecosystems Research.

As the Subcommittee has recognized in past hearings, ships are by no means the only pathway by which invasive species are spread. Trade itself remains a vibrant source of new invasive species, including both the intentional trade and transport of species which themselves may be invasive, and the unintentional transport of invasive species associated with other cargo.[15] According to the U.S. Fish and Wildlife Service, in 2002 more than 223 million fish were imported into the United States, as well as more than 47,000 mammals, 379,000 birds, 2,000,000 reptiles, and 59,000,000 amphibians. The pet industry contributes to the movement and release of invertebrates, fish, seaweed, and seagrasses used in the aquarium industry. Fisheries, including marine aquaculture, have resulted in the unintentional escape of invasive species into the open surrounding environment.[16] Additionally, intentional releases of species occur as a part of an intended stocking effort, and on occasion these introduced species have caused harm. An unknown number of living marine organisms are deliberately transported around the world daily for consumption, as bait for fishing and for aquaculture. There are an equally unknown number of incidents in which the public releases a few non-native organisms.[17] Other vectors for aquatic invasions are varied and include drilling platforms, dry docks, canals, research, ballast sediments,[18] recreational fishing and boating, intentional introductions and aquatic transport of trash.[19] Introductions from each of these vectors can have a significant impact on local ecosystems, impacts that can spill over to connected waterways and spread hundreds or even thousands of miles.

As the Subcommittee has previously recognized, prevention is the single most important strategy in the management of aquatic invasive species. By identifying how these species are spread, and managing the risks associated with those methods of transport, we can best minimize both the rate and spread of new invasions. Unfortunately, despite the significant volume of species moving both intentionally and unintentionally, the nation remains extremely vulnerable to new invasions because we currently lack the meaningful statutory authority to screen species coming into the United States for their potential to become invasive, and prevent those few species that are likely to cause harm.[20] Where prevention fails, and an invasive species is detected, it is critical to attempt to minimize the spread of the invasion as quickly as possible through an early

---

[15] For example, wood packaging material in ships cargo, imported plants, and other host organisms brought into the country can contain associated pests and pathogens.

[16] Atlantic salmon are now found in the Pacific Ocean, having escaped from aquaculture pens off the coast of Maine.

[17] The local "snakehead" fish now established in the Potomac is a well known example. Additionally, the use of seaweed for bait packaging with worms from the U.S. Atlantic coast apparently led to the introduction of the European shore crab on the American Pacific coast.

[18] *See, e.g.*, Godwin, L. Scott, "Hull Fouling and Ballast Sediments: The Importance of Vectors Other than Ballast Water in Transporting Nonindigenous Marine Species in the Hawaiian Islands," Presentation at the First National Conference on Marine Bioinvasions, M.I.T., Cambridge, Mass. (Jan. 25, 1999).

[19] Barnes, David, "Invasions by Marine Life on Plastic Debris," *Nature*, Vol. 416, pp. 808-09 (April 25, 2002).

[20] While Congress has struggled each year since the 1990s to appropriate critically needed funding to the Army Corps of Engineers to maintain an electric barrier to prevent two species of highly invasive asian carp from entering the Great Lakes chain, millions of these fish continued to be legally bought and sold until as recently as 2005.

detection and eradication effort. The Ecological Society of America's recently released position paper *Biological Invasions: Recommendations for U.S. Policy and Management,* recognized that while the risk is alarming, strong proactive policy solutions based in science can greatly enable the country to better prevent and respond to aquatic invaders.[21]

C. Recommendations to the Subcommittee

1. Continued Leadership to Support Enactment of Comprehensive Federal Authority to Address All Pathways of Aquatic Invasive Species

The Nature Conservancy has previously urged Congress to take swift action on comprehensive legislation such as NAISA that would address *all* pathways of aquatic invasive species. We are concerned that continued action to address only a single pathway will fail to stop new harmful invasions. While we appreciate the jurisdictional limitations of this Subcommittee, we request that you continue your consistent record of collaboration with Members of other relevant Committees towards enactment of a coordinated legislative approach.

In particular, we note the Subcommittee draft would remove the existing National Invasive Species Act's (NISA) provision that recognizes Congressional intent to coordinate Coast Guard authority under NISA with EPA authority to regulate ballast discharges under the Clean Water Act.[22] A similar provision in Senate legislation to block the application of EPA's Clean Water Act authority has been challenged by several Great Lakes State Governors, Attorney Generals, and environmental groups.[23]

While The Nature Conservancy has supported legislation such as NAISA that would provide enhanced authority to both EPA and Coast Guard in managing ballast water discharges, we have voiced concerns with proposals to replace EPA's Clean Water Act authority with less stringent legislative authority vested solely with Coast Guard. The Clean Water Act provides significant tools, such as the availability of strong civil and criminal penalties for non-compliance, state involvement, citizen suit enforcement, and user fees that could be brought to bear on this critical problem. The application of potential tools such as these should not be abandoned in the establishment of new statutory authority. We hope to continue our current dialogue with

[21] *See* David Lodge et al, *Biological Invasions: Recommendations for U.S. Policy and Management,* Ecological Society of America (2006).
[22] *See* National Invasive Species Act, 16 U.S.C. § 1411(b)(2)(C).
[23] *See, e.g., Letter,* Attorney Generals for the states of Illinois, Michigan, Minnesota, New York, Pennsylvania, Wisconsin, to Senator Stevens (July 20, 2005), "The bill unacceptably removes EPA's regulatory authority under the Clean Water Act to control pollutant discharges in ballast water, preempts states' ability to enforce laws that protect against these harmful pollutants; and perpetuates an ineffective regulatory effort and fails to replace it with timely sound environmental standards. Accordingly, we urge you not to permit this bill to advance."

industry, states and affected stakeholders over the coming months to assist this Subcommittee, as well as the Water Resources and Environment Subcommittee, in further shaping legislative proposals to ensure they expand, not detract from, the existing authority available to federal agencies and states in responding to invasive species contained in ballast water.

2. We Urge Further Development of the Draft Legislative Proposal to Ensure Rapid, Strong Progress in Preventing New Invasions from Ships Ballast Water

Should the Subcommittee elect to move forward to address the ship pathway as a stand alone measure, forgoing more comprehensive legislation, the following comments are intended to assist the Subcommittee in ensuring that its goal to enact strong federal standards to treat ballast water discharges is achieved. We additionally request the Subcommittee consider addressing a few additional vessel pathways currently not included in the July 5th Draft ballast legislation.

a. Ensure that treatment standards improve technology and reduce invasions over time

The Nature Conservancy has supported application of a ballast treatment standard that forces the development of ever improving treatment technology over time, as economically available. This could be achieved either by establishing a numeric floor in statute and requiring its periodic review and improvement by the relevant agency, or by establishing clear factors for the standard-setting agency to consider in articulating a standard through regulation (as proposed by both S. 770 and the Clean Water Act's technology standards). Either of these approaches, if utilized by the Subcommittee, would accommodate the current scientific uncertainty over what may be achievable in the future, while creating strong accountability to ensure consistent progress over time. In either case, we support the implementation of treatment technology on board ships within 5 years from the date of enactment of legislation, the incorporation of adequate incentives to develop and utilize new technology, and meaningful penalties for delay and non-compliance in meeting the standards.

The July 5th Draft proposal would require the Coast Guard to first undergo rulemaking to ascertain whether technologies exist to meet a specific numeric standard within the next two years. The proposed numeric standard is based on a subcomponent of the standard utilized in the International Maritime Organization's Ballast Water Convention (hereinafter IMO Ballast Convention). If the technologies exist, the Coast Guard is directed to require the standard to be met 5 years later. There are currently no provisions provided in the draft bill, such as incentives or penalties, to ensure compliance with the requirement to meet standards, nor does the proposed bill require monitoring or inspections. Finally, while the proposal indicates the Coast Guard "may" review standards periodically, and "if appropriate" tighten the standards, it does not further elaborate under which circumstances such review should occur.

We strongly support the legislation's recognition for the need for improvement over time in development of treatment standards, and we appreciate the Subcommittee's effort to expedite compliance with a standard compared with the decade implementation regime envisioned by the Convention. However, we are concerned that the framework as currently drafted is insufficient to achieve the Subcommittee's goals to reduce new invasions.

First, if the Subcommittee prefers to establish an initial numeric floor in statute for later periodic review, we suggest basing that initial numeric standard on EPA and Coast Guard's recommended standard in entering the IMO Ballast Convention negotiations. While IMO's standard may reflect a reasonable first step for the world as a whole, we believe that EPA and Coast Guard's initial recommended standard should be utilized as the more appropriate indicator of U.S. capabilities.[24] Utilization of this standard as the floor, while not immediately achievable, would be feasible through the development of technology within a suggested time frame prior to initial implementation.

Second, the delay of 5 years between feasibility review and implementation of treatment technology on ships may cause research and development to stagnate, and we believe the latitude granted to Coast Guard in defining the appropriate circumstances for review is overbroad. We urge the Subcommittee to revise the standard process to ensure the strengthening of standards over time by requiring the review of standards periodically under a specific time schedule and criteria established in the statutory language. We additionally urge the Subcommittee to impose its baseline initial standard to be implemented on all ships no later than 5 years from the date of enactment.

Finally, we recommend the subcommittee link the standard review process to an overarching legislative goal, such as zero discharge of viable species, to ensure a continued statutory mechanism to improve ballast treatment technology over time. The Clean Water Act contains a similar zero discharge of pollutants goal which drives the establishment of technology standards to be reviewed and improved over time. There simply is no known safe amount of invasive species; unlike conventional pollutants, even a few individual species discharged may cause irreversible harm. Therefore, it is imperative to always strive for improvement as economically feasible to do so.

[24] Currently IMO Convention has only 7 signatories to date, and the United States has declined at this time to become a signatory. Even assuming the Convention in time achieves the needed signatory nations to enter into force, and that the United States ratifies the Convention, the Convention fully recognizes the right of individual nations to unilaterally take more stringent action.

b. We urge the Subcommittee to address additional significant sources of ship borne invasive species such as NoBOBs and ships engaging in coastal traffic.

As noted earlier, NOBOB vessels are currently exempted from existing law requiring ballast exchange, and we urge the Subcommittee's leadership to urge Coast Guard to take immediate regulatory action implementing better management practices for NOBOB vessels. The Great Lakes Regional Collaboration recognized action on NOBOB vessels to be one requiring 'immediate' attention. The National Invasive Species Act requires Coast Guard to issue regulations to "prevent the introduction and spread of aquatic nuisance species"[25] and further requires these regulations to apply to "all vessels equipped with ballast water tanks."[26] Coast Guard has unfortunately applied regulations only "to each vessel that carries ballast water,…"[27] not to all vessels equipped with ballast tanks, leading to the regulatory exemption of over 80% of the vessels entering the Great Lakes.[28]

We urge the Subcommittee to introduce targeted legislation as soon as possible addressing solely the NOBOB issue, while continuing to further develop draft ballast and other pathway provisions. This would help ensure NISA's existing requirements to carry out ballast water exchange or alternate ballast water management methods apply to *all* vessels. The legislation could simply require Coast Guard to issue regulations immediately prescribing the development of alternate ballast water management methods for these ships. Targeted action this Congress on this important issue would not adversely affect the vessels' later compliance with ballast treatment standards developed under the larger new statutory framework, but would simply help close the current regulatory loophole until such time as that framework is provided. We appreciate and strongly support Subcommittee staff's prior efforts on this very issue in other legislative proposals affecting the Great Lakes.

In addition to NOBOB vessels, ships that operate exclusively within the U.S. Exclusive Economic Zone would be exempt from the Subcommittee's proposal as currently drafted. Many of these ships, particularly on the West Coast, have contributed to the spread of invasive species from port to port. We urge the Subcommittee to additionally ensure these vessels are subject to ballast water treatment standards.

[25] 16 U.S.C. § 4711(b)(1).
[26] 16 U.S.C. § 4711(b)(1)(A).
[27] 33 C.F.R. Part 151, subpart C.
[28] The GAO summarized the NOBOB problem and inadequate regulatory response by Coast Guard in a recent report, entitled "Invasive Species: Progress and Challenges in Preventing Introductions in U.S. Waters via the Ballast Water in Ships," pages 14-15, *available at* <http://www.gao.gov/new.items/d051026t.pdf.>

c. Ensure accountability through inclusion of enforcement provisions that compliment state efforts and coordinate federal authorities

The Draft proposal currently does not suggest new enforcement provisions beyond those afforded by the existing framework NISA, while removing the potential application of Clean Water Act authority. Both Coast Guard and EPA's record in implementing existing statutory authority available through both NISA and the Clean Water Act has been decidedly inadequate. Given this history, states and the public are understandably reluctant to give up the availability of applying the Clean Water Act's tools, including the opportunity to ensure federal agency action through citizen suit action, without strong legislative provisions to ensure goals established in new legislation will be met.

Consider, for example, that reporting on ballast water exchange was ostensibly made mandatory in 1996 through amendments to the NISA program. However, compliance with even this initial step failed because of a lack of enforcement. Only for the West Coast of the contiguous U.S. did compliance with the reporting requirement increase markedly over time, primarily from an increase in California. This increase coincided with implementation of the 1999 California state law that requires submission of copies of the federal ballast water management reports to the State Lands Commission, authorizes monetary and criminal penalties for noncompliance, charges fees for maintenance of the program, and utilizes an active boarding program that targets 20-30% of arrivals, far higher than the level of boarding by the Coast Guard during that period. As a result, compliance with reporting in California increased over the 12-month reporting period to approximately 75%. Today, reporting in California is well over 3 times that of the rest of the nation. California agencies use the funding available from the fee program to board over 25% of the incoming vessels as part of the enforcement program, further boosting compliance.

Since California's passage of a state ballast law, several additional states have introduced and enacted state legislation, largely out of frustration at the slow pace of federal efforts. While states support the enactment of strong national standards, many have voiced opposition to proposals that would preempt their authority without providing a sufficiently stringent federal floor for action, and where the removal of Clean Water Act authority (including the right to bring citizen suit action to enforce federal agency action in implementing the federal program) was at stake.[29] The July 5th Draft Proposal currently does not speak to the issue of state preemption,

[29] *See, e.g., Letter,* Council of Great Lakes Governors (including Wisconsin, Ohio, Illinois, Indiana, Michigan, New York, Minnesota, Pennsylvania) to the Senate Commerce Committee, September 12, 2005, "The following provisions must be included in any effective Congressional Bill that addresses this issue: […] Maintain the possibility of using U.S. EPA's Clean Water Act authority to address ballast water discharges so that States can assure their publics that they and their resources will receive adequate protection from this threat even if the federal program fails to be implemented; Maintain the possibility of State action to improve on federal protections related to ships. While a uniform federal regulatory process is necessary, it should not preclude the States from strengthening

though the Proposal would remove existing law's recognition of Clean Water Act applicability to ballast water discharges. The states and the public want adequate assurance that new federal authority created will be sufficiently rigorous, and they have requested continued meaningful involvement in any new federal authority created to abate invasive species.

Therefore, The Nature Conservancy recommends new federal legislation establish strong uniform federal treatment standards, yet allow states to continue exercising robust authority to take additional actions such as imposition of user fees, monitoring and inspection, and enforcement as the states may deem necessary to protect their natural resources held in the public trust. We additionally urge the Subcommittee to include further opportunity for public review and comment on agency obligations and timelines established under the proposal. We are appreciative of the Subcommittee's issuance of this Discussion draft to further the development of a proposal which we hope in time will reflect a balance between environmental protection and economic consistency that will enable the proposal to receive broad stakeholder support. We will continue to offer more targeted recommendations to your staff.

d. Provide designated funding through establishment of a user fee program

Implementation of NISA's ballast water management program and research has been inadequate in part because of the lack of critical funding. Unfortunately, despite strong support from several Members of the Subcommittee, annual appropriations for NISA programs have been lacking. For example, research has been hampered by a lack of funding, coordination, standardization and access to data. A lack of needed research impairs the nation's ability to assess the effectiveness of ballast water management methods, roles of other sources of aquatic invasives, and the state of invasions in the nation's waters. It would be unrealistic to provide substantially broader authority and responsibility for several federal agencies without providing them with the necessary financial support to meet their obligations. Regular, stable and increased funding is essential to the success of the program.

Therefore, TNC recommends the creation of a fund supplemented through user fees to be used for enforcement and rapid response. For example, the Clean Water Act has achieved general success in regulating point source discharges through its permit program, under which water users and dischargers pay fees for the enforcement and implementation of the Act. Similarly, the California ballast water program includes fees of $400 per qualifying vessel voyage, and as a result is more adequately funded and far more successful than its federal counterpart. Notably the implementation of the stringent ballast treatment program in the state has not resulted in a

---

these protections as needed." […] "We are concerned with the following provisions: A State preemption clause that would preclude States from taking steps to protect against damage by AIS introduced through ballast water; a clause that the Act would supercede any provision of the Clean Water Act with respect to ballast water…"

decrease of traffic. We urge the Subcommittee to support the inclusion of a user fee fund, to pay for the implementation and enforcement of the program, thus ensuring the success of the overall program.

Conclusion

It is widely accepted that the nation is facing an alarming and *increasing* rate of aquatic species invasions. It is overwhelmingly evident that we must act swiftly to provide comprehensive authority to prevent further aquatic invasions. We welcome the leadership demonstrated by this Subcommittee in holding repeated hearings on several important legislative proposals over the years to advance thinking on this important issue. We hope the Subcommittee will take immediate action to address NOBOBs, and we look forward to continued collaboration with your staff in developing the larger legislative proposal to address ballast water discharges from all ships.